IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.MC.No. 2598 of 2007()

[CRIME NO.129/2004 OF KAMBALAKKAD POLICE STATION]

PETITIONER: ACCUSED:

JAISON, S/O.ULAHANNAN,
MUNDAPPILAVUNGAL HOUSE, ARINCHUMALA P.O.,
PANAMURAM, WAYANAD.

BY ADV. SRI.LALJI P.THOMAS

RESPONDENTS: RESPONDENT/COMPLAINANT:

SUB INSPECTOR OF POLICE, KAMBALAKKAD,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2598 of 2007

Dated this the 20th day of August 2007

O R D E R

The petitioner now faces indictment in a prosecution under Section 55(a) of the Kerala Abkari Act. Final report has been filed. Cognizance has already taken. Proceedings are now pending as C.P.No.20/07 before the learned Chief Judicial Magistrate, Kalpetta, submits the learned counsel for the petitioner.

2. Proceedings commenced on the basis of an F.I.R lodged by the Sub Inspector of Police, Kambalakkad police station on 6/7/2004. Crime was registered under Section 102 Cr.P.C. The Sub Inspector of Police allegedly inspected the premises of the petitioner on receipt of information that some intoxicating liquor was kept in the premises of the petitioner. Seizure was effected. The article was sent to the chemical examiner for report. The report of the chemical examiner shows that the article in question contains ethyl alcohol. Consequently final report has been filed raising allegations under the Kerala Abkari Act against the petitioner. The precise allegation raised is under Section 55(a) of the Kerala Abkari Act.

3. The learned counsel for the petitioner fairly submits that even though he disputes the alleged seizure etc. he is not

pressing those contentions at this stage under section 482 Cr.P.C. The learned counsel raises only one contention before me. He urges that the article seized cannot, in any view of the matter, be held to be liquor, inasmuch as the report shows that the percentage of ethyl alcohol present is only 6.2 and 2.15 respectively in the two bottles which were sent for chemical examination. Therefore, the learned counsel contends that the prosecution under the Kerala Abkari Act is not justified or possible.

4. I am afraid, I cannot accept this contention. Section 3 (10) of the Kerala Abkari Act defines liquor in the following words.

(10) Liquor:- "liquor" includes spirits of wine, [arrack], spirits, wine, toddy, beer and all liquid consisting of or containing alcohol."

5. The contraband article seized from the premises did certainly contain ethyl alcohol as seen from the report of chemical examination. In these circumstances, I find no merit in the contention that the article seized cannot be held to be liquor. Inasmuch as the article contains ethyl alcohol, it must now be

held to answer the definition of liquor in Section 3(10) of the Kerala Abkari Act.

6. Possession of liquor without legal authority is an offence under the Kerala Abkari Act whatever be the precise offence and I do not find in these circumstances any merit in the prayer for quashing the proceedings. The petitioner has various contentions to urge. He even questions the finding that there was presence of ethyl alcohol in the article from which sample was taken. The learned counsel relies on different percentages of alcohol reported in the report of analysis, when admittedly both samples of the article were taken from one container. Be that as it may, it is not necessary for me to go into those contentions now. The petitioner shall be at liberty to raise all necessary and appropriate contentions before the courts below in the course of the trial.

7. I do not, in these circumstances, find any merit in the contention that the prosecution is bound to fail for the reason that what is seized is not liquor at all.

8. The learned counsel for the petitioner submits that the petitioner is absolutely innocent and apprehends that his

application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that appropriate directions may be issued.

9. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits, in accordance with law and expeditiously. Every court must do the same. His application for bail will have to be considered in the light of the decisions in Sukumari v. State of Kerala [2001(1) KLT 22] and Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339]. I need only observe that such application must be considered on merits and disposed of expeditiously - on the date of surrender itself. This petition is in these circumstances dismissed with the above observations and directions.

Hand over copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007